

PUBLIC LAW BOARD NO. 4104

Case No. 1

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATE OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Section Laborer J. Strain for alleged violation of Rules 665 and 667 of the Burlington Northern Safety Rules' was without just and sufficient cause and on the basis of unproven charges. (System File 6 GR GMWA 81-12-4D).
2. The Claimant shall be reinstated to service with seniority and all other benefits unimpaired and he shall be compensated for all time lost, including overtime."

OPINION OF BOARD: On May 13, 1981, Claimant and three other Laborers were working near St. Louis, Missouri under the direction of his Forman, Mr. Mitchell. According to Carrier, Claimant and Laborer J. Strain failed to follow Foreman Mitchell's work orders that day and absented themselves from duty. As a result, Claimant and Laborer Strain were directed to appear for an investigation.* It was held on May 21, 1981. Thereafter, Carrier dismissed the two from service.

The Organization appealed Carrier's decision. Carrier rejected the appeal. It was subsequently advanced to this Board for adjudication.

The Organization argues that Claimant was improperly dismissed. It points out that the four Laborers involved in

*It is agreed that this claim involves both Claimant and Laborer J. Strain.

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the dispute testified they were unaware of Foreman Mitchell's alleged instructions to report to the Sled Gang at Grand Avenue. Since Claimant did not know where to go, he could not be found guilty of disobeying instructions, according to the Organization.

In addition, the Organization argues, Claimant did perform track work at Branch Street on the day in question. Thus, it asserts, he did not absent himself from duty, as alleged.

Finally, the Organization submits that Foreman Mitchell has displayed an attitude of hostility and animosity towards Claimant and his co-workers. Given these factors, the Organization urges that Claimant's discharge was arbitrary and capricious. Therefore, it asks that the claim be sustained in its entirety.

Carrier maintains that the testimony of Foreman Mitchell and other witnesses substantiates Claimant's failure to follow instructions on the day in question. In Carrier's view, this act and Claimant's poor prior record justifies his dismissal. Therefore, Carrier asks that the claim be rejected.

Upon review of the record evidence, we are convinced that the claim must fail. Carrier's Trial Officer chose to credit the testimony of Foreman Mitchell over that of Claimant. As the parties are well aware, given extraordinary circumstances not present here, this Board may not disturb a credibility finding by a Trial Officer.

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Given this factor, the record contains substantial evidence that Claimant did not comply with reasonable work orders on May 13, 1981. As such, his guilt of the charges has been established.

What is the appropriate penalty for this misconduct? Under other circumstances, a penalty less than dismissal might be warranted. However, we note, Claimant had been disciplined for similar misconduct in the past. He was suspended a total of 20 days for three separate infractions similar to those present here. Given this poor record, discharge was a reasonable penalty as a result of the events of May 13, 1981. Accordingly, and for the foregoing reasons, the claim must be denied.

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FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934:

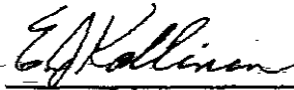
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

Feb. 7, 1989